



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 11, 2023

IN THE MATTER OF:

Appeal Board No. 628223

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination approving the claimant's application for career and related training under Labor Law §

599(2), and awarding the claimant two weeks of § 599(2) training benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed March 1, 2023 (A.L.J. Case No. ), the Administrative Law Judge modified the initial determination approving the claimant's application for career and related training under Labor Law § 599(2) awarding the claimant two weeks of training benefits, to

award the claimant four weeks of training benefits, and as so modified, sustained the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed to determine the number of effective days of regular benefits to which the claimant was entitled at the time the claimant was accepted in, or applied for, the §599 training program.

Specifically, documentation in the file, but not received into evidence, conflicts with testimony provided at the hearing, and further testimony and other evidence is needed to determine the number of weeks of training benefits to which

the claimant is entitled.

The Commissioner of Labor shall be represented at the further hearing, and shall produce Michael Hall, the Senior Unemployment Insurance Hearing Representative who testified at the February 28, 2023 hearing. This witness shall be confronted with, and prepared to testify about, the Claim History document in the file at pages 5 and 6. Specifically, the representative shall be questioned regarding how many weeks of unemployment insurance benefits the claimant had been paid as of the date she applied for, or was accepted into, the §599 training program, and how many weeks she had remaining on her claim.

The witness should also be questioned regarding whether, and how, the information on this document differs from the testimony previously provided by the witness. These pages shall be received into evidence after the appropriate confrontation and opportunity for objection.

Mr. Hall shall also be questioned regarding the explanation of the Department of Labor's calculation determining the number of training weeks to award the claimant, in the file at page 7. This document shall also be received into the record after the appropriate confrontation and opportunity for objection.

Further, in light of the claimant's assertions that she could not have known about the 599 program, and therefore could not have applied sooner, the Commissioner of Labor's representative is directed to produce the claimant's application for unemployment benefits, which the claimant testified she completed online with her daughter's assistance. The Commissioner's representative shall also produce evidence to establish whether the claimant asked for the claimant handbook to be mailed to her, whether it was mailed, and what, if anything, the claimant was told about the online availability of the handbook, and a claimant's responsibility to read it.

The Commissioner of Labor's representative shall also produce the relevant pages of the claimant handbook that address the 599 program and notify claimants of its existence and availability, since they are missing from the copy in the file.

Any of the above documentation produced shall be received into evidence after the parties have been confronted with them, and given the appropriate opportunity for objection.

The parties are placed on notice that failure to produce the witnesses and other evidence directed may result in the hearing Judge or the Board taking an adverse inference against that party, and concluding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive any other evidence needed to decide the issue.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER